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Solicitor's Personal Liability for Costs

THE basis of the court's jurisdiction to make solicitors personally liable for costs, as explained in *Myers* v. *Elman* [1940] A.C. 282 and quoted by SACHS, J., in *Edwards* v. *Edwards* (*The Times*, 28th March, 1958), is the duty of solicitors as officers of the Supreme Court to conduct litigation with due propriety. The conduct complained of, Sachs, J., said, must be such as to involve a failure on the part of the solicitor concerned to promote the cause of justice. The purpose was not to punish but to protect a completely innocent party. The mere fact that the litigation failed or that there was an error of judgment or mere negligence was not sufficient ; there must be something which amounted to a serious dereliction of duty and which was gross. *Edwards* v. *Edwards* was the first case in which such an order was asked for against solicitors acting for a person who had been granted a civil aid certificate, and Sachs, J., came to the conclusion that, having regard to the words of the Legal Aid and Advice Act, 1949, the fact that the solicitors were acting for a person under a civil aid certificate ought not to affect the position. The solicitor in question was acting for a client in proceedings based on wilful neglect to maintain, under the procedure provided in s. 23 of the Matrimonial Causes Act, 1950, and the solicitor had not followed the usual practice of first asking the husband's solicitors to supply information, which, if it had been supplied, would have made it difficult to take the view that the proceedings would be successful. As there was no previous authority on this, his lordship was not prepared to hold that the solicitor's conduct at that stage was such as to require him to be personally liable for the whole of the costs. After discovery, however, it was clear that the wife's case must fail. That was in May, 1957, and counsel was not asked to advise until a date shortly before the hearing. Time was so short that his advice was in the nature of a snap opinion, and Sachs, J., held that the fact that counsel advised favourably could not produce any cover for the past. Sachs, J., held that the solicitor for the wife, who had insisted on carrying on the case and informing the legal aid committee that he had a good case notwithstanding that the husband's solicitors had written to the area committee that the application was bound to fail, would have to indemnify the husband for his costs since 1st August, 1957.

Obscene Publications

IF the recommendations in the Report, published on 27th March, of the Select Committee on Obscene Publications are carried out, the absurdity of placing the responsibility on police officers of deciding what literature is obscene will

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disappear, and the consent of the Director of Public Prosecutions will have to be obtained for the initiation of proceedings. Literary or artistic merit will be a defence, and the author, even if he is not a party, will have a qualified right to be heard, and authors and publishers will be allowed to call expert evidence. These proposals seems to place a novel burden of responsibility on the Director, and unless expert literary and artistic assistance is afforded to his staff, his office may suffer from some of the ridicule in connection with this class of case that has hitherto fallen upon the police. This problem will have to be solved, for it is beyond dispute that there has been a serious increase in the circulation of pornographic matter. More debatably, the Committee suggest a definition of obscene matter based on the well known summing-up by STABLE, J., in *R.* v. *Martin Secker and Warburg* [1954] 1 W.L.R. 1138. Matter, they propose, should be deemed to be obscene "if its effect as a whole is such as to tend to deprave or corrupt persons to or among whom it was likely to be distributed, circulated or offered for sale." They also recommend that the maximum penalties on summary conviction should be a fine of £100 or four months' imprisonment, and on indictment a fine of £2,000 or three years' imprisonment. On the whole, we feel that little would be lost by making no change in the substantive law, buttressed as it is by Stable, J.'s charge to the jury in *R.* v. *Martin Secker and Warburg*. Where the changes are required is in the protection of innocent parties. We agree that booksellers and the proprietors of lending libraries should have the same protection as that given by the Children and Young Persons (Harmful Publications) Act, 1955, but think that the author should have an unqualified right to be heard in proceedings. We also agree that the law should be amended so as to render unnecessary the employment of an *agent provocateur*.

Atoms in the Courts

THE arrival of the atomic age in the Australian courts is marked by the award of £A 23,585 to a young immigrant in Melbourne by MONAHAN, J. The Commonwealth Government were the defendants and admitted liability. The plaintiff picked up a capsule from the floor of a power station where he was working and carried it in his pocket for six days. The capsule was radioactive and the plaintiff suffered from severe burns resulting in the amputation of his right leg. Section 5 (3) of the Atomic Energy Authority Act, 1954, already deals with the liability of the Atomic Energy Authority in this country and, as we mentioned on p. 130 of our issue of 22nd February last, we understand that a Bill is being prepared which will impose absolute liability on the owners of atomic reactors. We cannot recall any litigation as yet in this country arising out of atomic power; but we see that the December, 1957, issue of the *Massachusetts Law Quarterly* contains a 33-page symposium on the Windscale incident.

Drama and the Church

THE successful prosecution of the Superintendent Minister of the Grimsby Circuit of the Methodist Church has aroused widespread interest and, in some quarters, considerable apprehension. In his capacity as chairman of the trustees of a village church hall in which the Boys' Brigade had presented the pantomime "Cinderella," the minister was convicted because a licence in respect of this performance had not first been obtained in accordance with the requirements of s. 2 of the Theatres Act, 1843. This Act provides two legal traps into which the unwary may fall in this connection. Section 2 provides that an offence shall have been committed by any person who shall keep any house or other place of public resort for the public performance of stage plays without first obtaining a licence and s. 11 stipulates that it is illegal for any person, for hire, to act or present or cause, permit or suffer to be acted or presented any play in any place which is not duly licensed. The term "for hire" is stated to apply to those cases where "any money or other reward is taken or charged, directly or indirectly, or when the purchase of any article is made a condition for admission" (s. 16) and in *Fisher* v. *Watts* (1928), 73 SOL. J. 1, it was held that an offence may only be committed under this section where the actors themselves receive benefit from the hire. Section 2 is more likely to be troublesome to church trustees and, if plays or entertainments are to be presented on their premises, it is difficult to see how they are legally able to avoid complying with the onerous but desirable conditions imposed by the Lord Chancellor or local licensing authority in order to obtain the necessary licence. An example of the far-reaching effect of this section is to be seen in *Fisher* v. *Watts*, *supra*, where a clergyman was fined for allowing a play to be performed in his church as a continuation of an evening service without first obtaining a licence. No tickets were issued and the congregation were merely reminded that there was a place outside where they could make a contribution to the church restoration fund. The fact that a play is only performed once will not enable trustees to say that they do not "keep" their premises "for the public performance of stage plays" (*per* Mathew, J., in *Shelley* v. *Bethell* (1883), 12 Q.B.D. 11) and there are many performances on church premises which do not constitute private entertainment within the meaning attached to that phrase in *Duck* v. *Bates* (1884), 13 Q.B.D. 843. Although the position must be described as somewhat uncertain in many respects if only because there is a dearth of recent authority, it is quite certain that many trustees will be embarrassed and impoverished if the police in other parts of the country follow the lead given by their colleagues in Grimsby.

Smoking and Cancer

THE ingenuity of litigants and their legal advisers apparently knows no end. We were intrigued to read that an American woman is claiming very substantial damages from two tobacco manufacturers on the ground that her husband died of lung cancer which he allegedly contracted as a result of smoking their cigarettes and tobacco. The claim was laid in negligence in that the manufacturers did not give warning of the danger of using their goods and also in contract for breach of an implied warranty of wholesomeness. It is not our place to guess whether this action in New Orleans will be successful, but it is interesting to consider whether a plaintiff in similar circumstances in this country would be able to recover. So far as negligence is concerned, it is difficult to see how the claim could succeed, as in order to show that the manufacturers were in breach of their duty to take care it would be necessary to *prove* that smoking was the cause of the disease and of the death of the plaintiff's husband. At the present time and state of medical knowledge this requirement would surely also defeat a claim founded upon the Sale of Goods Act, 1893. Even if it could be proved that the death was caused by smoking cigarettes, there would seem to be little doubt that, in the case of negligence, a claim for damages could be successfully resisted by the defence of *volenti non fit injuria*.

AVOIDING STAMP DUTY ON SETTLEMENTS

At first sight it may appear that the recent decision of *Grey* v. *Inland Revenue Commissioners* [1958] 2 W.L.R. 168; *ante*, p. 84, shows a loophole in the stamp duty laws which many settlors might usefully exploit. It is submitted, however, that only a very limited number of settlors could find the decision to their advantage.

The brief facts of the case are as follows. A settlor had previously made six settlements of property, the trustees of each settlement being the same persons. Then on 1st February, 1955, the settlor transferred to those trustees, as his nominees, 18,000 shares in a company. On 18th February, 1955, he orally directed the trustees to hold 3,000 of the shares on the trusts of each of the six settlements. On 25th March, 1955, the trustees executed six declarations of trust (the subject-matter of the case) each of which recited the transactions of 1st February, 1955, and 18th February, 1955. In each such declaration of trust the trustees declared that since 18th February, 1955, they had held the shares upon such trusts as were declared in the relevant settlement. Each declaration of trust was executed by the settlor, though he was not expressed to be a party to it. Upjohn, J., held that the only stamp duty payable on each declaration of trust was 10s. In other words, the documents should not be stamped either as voluntary dispositions *inter vivos* (Finance (1909–10) Act, 1910, s. 74) or as settlements (Stamp Act, 1891, s. 1 and Sched. I).

The short point of the case is that the oral declaration of trust was sufficient to pass the equitable interest. Section 53 (1) (*c*) of the Law of Property Act, 1925 (which requires " a disposition of an equitable interest or trust subsisting at the time of the disposition " to be in writing), did not apply; s. 53 (1) (*c*) only applies to the type of disposition which fell within s. 9 of the Statute of Frauds—i.e., assignments. It does not apply to the transfer of equitable interests by way of declaration of trust.

The general principle

Can a future settlor avoid stamp duty by following a similar procedure? First, the transfer of property; then the oral declaration of trust; then, at some later date, the written declaration of trust executed by both the trustees and the settlor. The difficulty is the general principle that a person cannot escape stamp duty merely by splitting up a transaction into two, e.g., paying the money first and executing the documents afterwards. This is illustrated by the cases of *Horsfall* v. *Hey* (1848), 2 Ex. 778, *Garnett* v. *Inland Revenue Commissioners* (1899), 81 L.T. 633, and *Cohen & Moore* v. *Inland Revenue Commissioners* [1933] 2 K.B. 126.

In *Horsfall* v. *Hey*, *supra*, objection was taken to a document on the ground that it was not properly stamped. The document stated: " Memorandum that *T* has sold to *G* all the . . . fixtures " in a certain shop. It was argued that the document was not a conveyance on sale but a memorandum of a past transaction. It was held that the past tense made no difference. Parke, B., said: " The instrument, though it uses words in the past tense, is the record of an agreement that from its date the purchaser shall have full right of removing the fixtures." The headnote states: " Any instrument which operates as a record of the transfer of property is a conveyance within the Stamp Act "; but a consideration of later cases shows that this is probably too wide.

A similar question arose in *Garnett* v. *Inland Revenue Commissioners*, *supra*, where it was argued that a deed concerning a partnership dissolution was not a " conveyance on sale " but a mere record of a past transaction. A Divisional Court held that the argument did not prevail and that *ad valorem* duty was payable. Channel, J., said, at p. 638: " If this argument is good, it seems to me that by paying your money first and executing your deed afterwards you could always get out of the *ad valorem* stamp. That cannot possibly be so. It seems to me that . . . the question is whether it is one transaction. If there is a clearly independent transaction and it is not all part of one transaction, then the thing would stand on a different footing." The learned judge then proceeded to state how such a document might be a clearly independent transaction; such would be the case if the dissolution, transfer of assets, and winding up were all completed in one year, and then, in a later year, the parties decided to have a document recording the transaction.

In *Cohen & Moore* v. *Inland Revenue Commissioners*, *supra*, a deed recited that, some five weeks previously, the settlor had orally declared that he would hold fund X on trusts to be declared by the deed. (The deed was in draft at the time of the oral declaration.) The deed appointed new trustees and settled fund Y (which was comparatively small). Finlay, J., held that the oral transaction and the deed together constituted one transaction and therefore duty was payable on fund (X + Y) and not merely on fund Y.

A question of fact

Upjohn, J., considered this " all one transaction " rule in *Grey* v. *Inland Revenue Commissioners*, *supra*, but decided not to apply it. The Commissioners had not found as a fact that the oral and written declarations were one transaction, and in the absence of such a finding the learned judge thought he ought not to infer it. He said, at [1958] 2 W.L.R. 171: " Unlike *Cohen & Moore's* case, there is no evidence that the six declarations were in draft at the time of the oral directions. It is at least possible that they were brought into existence as the result of second thoughts after 18th February when it was realised that these trusts were for very young grandchildren and would last a long time and that some written record was desirable."

It may be that the appellants in *Grey* v. *Inland Revenue Commissioners* were lucky; for if the Commissioners had considered the question they might have found that it was all one transaction. This is essentially a question of fact (*per* Upjohn, J., at p. 171). If the written document is already drafted when the oral declaration is made, it seems there is only one transaction (*Cohen & Moore* v. *Inland Revenue Commissioners*, *supra*); but if the settlor first intends the transaction to be completely oral, and then changes his mind, it seems the subsequent document will be an independent transaction (this seems to follow from remarks of Channel, J., in *Garnett* v. *Inland Revenue Commissioners* and remarks of Upjohn, J., in *Grey* v. *Inland Revenue Commissioners* mentioned above).

Intention the main test

An intermediate situation arises when the settlor intends, from the beginning, to avoid stamp duty by making the oral declaration first and by executing a deed later, but the deed is not drafted until after the oral declaration. On these facts, the court could hardly fail to say that the oral declaration and

deed were all one transaction. This seems to be the common-sense view. In *Cohen & Moore* v. *Inland Revenue Commissioners, supra*, the deed was in draft at the time of the oral declaration, but it would be most unsafe to conclude that stamp duty could be avoided merely by drafting the deeds after the oral declaration. Such a conclusion seems to be contrary to *Horsfall* v. *Hey, supra*, and *Garnett* v. *Inland Revenue Commissioners, supra*. According to *Garnett's* case and *Grey's* case, it appears that the main test is whether, at the time of the oral declaration, the settlor intended to put the settlement into writing at a later date.

Further, it is hard to see how *Grey's* case could apply to the creation of an entirely new settlement with complicated provisions. If a settlor attempts to make an oral settlement by referring to the terms of an unstamped written document it would seem that the unstamped document should be stamped accordingly.

In conclusion, it seems that a settlor could only take advantage of *Grey* v. *Inland Revenue Commissioners, supra*, in the following circumstances :—

(*a*) where the settlement itself is simple, or where it is made by reference to an existing settlement ; and

(*b*) where at the time of the oral declaration the settlor genuinely does not intend to put the terms into writing.

H. A. R.

NOTES ON FORMING A COMPANY—IV

ALTHOUGH the memorandum of association of a company is, as between the memorandum and articles, the governing document, in practice, during the course of the everyday running of the company, the articles of association are more frequently consulted. The reason is that the articles govern the internal management of the company and lay down the manner in which business is to be conducted. They cover such matters as the issue of shares and the rights of the different classes of shareholder, provisions as to the regulation and conduct of meetings of members and others and the powers and duties of the directors.

The various Companies Acts have, from time to time, provided sets of model articles which have appeared in the First Schedules to the Acts and which have been entitled " Table A." As a result of this, by custom arising out of constant usage, the expression " Table A " has become an integral part of company law. Each successive Companies Act has produced a different version of Table A, and the provisions of Table A are, when applicable to any company in the absence of any contrary indication in the articles of the company, those of the Table A of the Companies Act in force at the time the company was incorporated. There are, in fact, four versions of Table A : those of the Companies Act, 1862 (as modified in 1906), the Companies (Consolidation) Act, 1908, the Companies Act, 1929, and the Companies Act, 1948. In the case of a company about to be incorporated at the present day the appropriate Table A would, of course, be that of the Act of 1948.

A company may adopt Table A as its articles in whole or in part (s. 8 (1)). If special articles are not registered, or, if special articles are registered, then in so far as the articles do not exclude or modify the regulations in Table A, those regulations are, so far as may be applicable, to be the regulations of the company (s. 8 (2)).

Although technically, in the case of a public company limited by shares, it is not imperative that articles be registered (in practice they always are), such a course is essential for a private company, as, by definition, its articles must include the restrictive provisions of s. 28.

The principal consideration is, therefore, whether to adopt Table A in whole or in part. In the 1948 Act Table A is divided into two parts : Pt. I is expressed to be applicable to a company " not being a private company " and Pt. II is applicable to a private company. As, with the exception of two clauses, Pt. II incorporates the whole of Pt. I, it may broadly be said that the 1948 Table A for a private company consists of Pts. I and II of Table A to the 1948 Act.

Adopting Table A

The main question the solicitor has to decide when drafting the articles of a company is how far it will be necessary to amend the provisions of Table A. Although, in theory, it is possible to draft a completely fresh set of articles, in practice there is little doubt that the best plan is to adopt Table A as the basis for the articles, only making such modifications as may be really essential to deal with special circumstances, such as a right of pre-emption of shares.

The reason for recommending this course is that Table A is fairly comprehensive and deals with most eventualities. It may be assumed to reflect the views of Parliament on the best method of dealing with the various points. It is balanced as a whole. Many of its clauses have stood the test of time, and have been the objects of judicial consideration, factors which may be an advantage should any question of interpretation arise at a later date. Finally, if Table A is not to be adopted, the solicitor should ask himself what he proposes to use in its place, and whether the alternative has any real advantages.

One practical point needs careful consideration : whether or not to print a special set of articles in full. Owing to the expense of printing a custom has grown up of registering an attenuated set of articles which incorporate the bulk of Table A by reference, and contain only a few special clauses dealing with particular points such as class rights. Articles of this type are quite legal and proper and are, indeed, the rule rather than the exception. Provided a copy of the relevant Companies Act is to hand, such a course should prove perfectly satisfactory. This form of drafting is, nevertheless, open to the criticism that it is drafted by lawyers for lawyers. Difficulties start to arise when the articles have to be consulted and no copy of the Act or text-book with a print of Table A is available—a situation of only too common occurrence.

It cannot be too strongly emphasised that the articles are a commercial document which more often than not is consulted by businessmen who do not wish to go to the trouble of, or to have to spend time in, referring every small point to a professional adviser, be he solicitor, accountant or chartered secretary. Consequently there is great convenience in having a complete set of articles in one document and, if the solicitor can persuade the client who is forming the company to incur the necessary expense, he should do so. The money may be regarded as well spent and will probably repay itself over the years in saving of time and trouble.

It is as well to anticipate that one day the 1948 Act will be repealed and be replaced with a new Act having a revised Table A. Practical experience shows that, outside fully equipped legal offices, it is not always easy to find copies of earlier legislation, since repealed ; or old editions of text-books.

It is therefore hoped that the company to be formed will register as its articles a full print based on Table A, amended as required to meet special circumstances. Brief consideration will now be given to one or two points that may require special treatment, but the sheer magnitude of the task prevents any attempt at detailed consideration of the individual regulations of Table A.

Share capital and variation of rights

Share capital was considered earlier in connection with the memorandum. Table A gives wide powers to issue shares with special rights or restrictions (art. 2) and also gives power to issue redeemable preference shares (art. 3). Article 4 deals specifically with the variation of class rights and provides that, in general, they may be varied by extraordinary resolution. This is important as no matter what plans may be made on the formation of a company flexibility in capital structure is a most desirable quality.

The general rules regarding the variation of class rights may be summarised as follows :—

1. Where the rights are stated in the memorandum and there is no variation clause, they can only be varied by means of a scheme of arrangement under s. 206. This will involve an application to the court, which most men of business consider to be something to be avoided at all costs.

2. Where the rights are stated in the articles but there is no variation clause, the rights can be varied in the ordinary manner, that is by special resolution (s. 10).

3. Where the rights are stated in either the memorandum or articles and there is a variation clause the rights may be altered by invoking the method therein set out. If, however, the variation clause is in the articles, it itself may be altered, if necessary, by special resolution, whereas the alteration of such a clause if contained in the memorandum is expressly prohibited by s. 23 (2). Whether the variation clause is in the memorandum or articles s. 72 confers a limited right of appeal to the court by dissenters.

It seems to follow that the most suitable place for any statement of the rights of various classes of shareholders and for any variation clause is in the articles.

H. N. B.

Common Law Commentary

MEASURE OF DAMAGES IN CONVERSION

A RECENT unreported decision of Streatfeild, J., is of interest as an illustration of the practical application of the rules concerning the ascertainment of the measure of damages in an action for conversion. But before setting out the details of that case it is necessary to record the unsatisfactory nature of the decisions at the moment and the need for a re-statement of the law at least in the Court of Appeal.

It used to be thought that in an action for conversion one measured damages as at the date of the conversion—an event necessarily earlier than the date of the judgment ; whereas in detinue one took the date of the judgment, so that, in a given case, if there were choice of remedy it would be advisable to sue in detinue on a rising market and in conversion on a falling one. If we could simplify the circumstances in which these actions were respectively applicable we should like to put it that conversion applied where the defendant no longer had the goods and detinue where he still possessed the goods but refused to hand them over. That would give some logical pattern to the cases, though whether the distinction would be justified is another matter. But we cannot make that simplification for a number of reasons : one is that conversion is not primarily concerned with the goods themselves but with the defendant's denial of the plaintiff's right to the goods—a denial that persists up to the date of judgment, just as in detinue the wrongful detention persists to the date of judgment. Another reason is that where there is wrongful detention one can sue for conversion or detinue.

Some ten years ago there were one or two decisions which seemed to move towards the simplified position suggested above. *Rosenthal* v. *Alderton & Sons, Ltd.*, [1946] K.B. 374, having said that in an action in detinue one took the date of judgment as the date of assessment of damages (thereby following the accepted rule), proceeded to say that that rule applied even though in fact the defendant had converted the goods. Being an action in detinue, this by itself could be accepted, but in *Sachs* v. *Miklos* [1948] 1 All E.R. 67 there were statements to the effect that the damages are to be assessed in the same manner in detinue as in conversion, at any rate where the facts are only that the defendant has the goods in his possession and could hand them over but will not. Hence we get a rule based not on the nature of the claim (if *Sachs* v. *Miklos* is right) but on whether the defendant has the goods.

Sachs v. *Miklos* added another rule to the effect that a plaintiff is not to be allowed to delay his action, where the market is rising, so as to get an inflationary benefit. If he knew or ought to have known of the wrongful act at a date earlier than the date when he first complains, the court will not allow him the enhanced value at the date of judgment.

The rules in *Hadley* v. *Baxendale*

Denning, J. (as he then was), gave an interesting summary of the development of the two actions of detinue and conversion in *Beaman* v. *A.R.T.S., Ltd.* [1948] 2 All E.R. 89, and though this judgment was reversed by the Court of Appeal ([1949] 1 All E.R. 465) the reversal was on another point. His lordship also pointed out that in some of these cases there may be an alternative claim for breach of contract. The contractual position seems to have influenced some judges on the question how one measures the damages, and it is on this point that the case which provoked this note will be seen to be relevant. More than once judges have referred to the rules in *Hadley* v. *Baxendale* (1854), 9 Ex. 341, but those rules are rules governing contracts, whereas a claim in conversion or in detinue is a claim in tort ; it is true that detinue was originally confined to cases of bailments, but bailments are arrangements *sui generis* and not necessarily contracts, though the old action for *detinue sur bailment*

was an action in contract. *Hadley* v. *Baxendale*, it is submitted, is relevant only by way of analogy at the most.

There have been several cases where the question has been discussed whether the first rule in *Hadley* v. *Baxendale* only applies in cases of conversion or detinue, or whether the second rule also applies (see, e.g., *The Arpad* [1934] P. 189). But even taking the first rule, there is a difference between its wording and the usually accepted rule for assessment of damages in tort in that in *Hadley* v. *Baxendale* the rules speak of loss " arising naturally," whereas in tort it is said that the plaintiff is liable for " direct consequences," and these two expressions do not necessarily have the same meaning. What happens " naturally " from the breach of contract means what the parties could reasonably expect to happen when they made the contract, but when a person commits a tort he runs the risk what the direct consequences may be : they may be completely unforeseeable. The position is put very clearly by Scrutton, L.J., in his dissenting judgment in *The Arpad*, at p. 201 *et seq.*, and the writer believes that that statement on this aspect of the law is correct notwithstanding that it appears in a dissenting judgment ; of course, it is not authoritative, as *The Arpad* was a case where the claim was based in the alternative on contract and tort and the Court of Appeal by a majority held that the measure of damages was the same on either head of claim.

Last-known transaction as evidence of value

Coming now to our recent decision, *F. R. Evans (Leeds), Ltd.* v. *British Trailer Co., Ltd.*, heard at Leeds Assizes on the 24th January last, the facts were that the defendants purchased shortly after the war from the Government twenty petrol-electric generating sets for about £35 each and resold them to a third party who resold them in 1951 to the plaintiffs for £110 each, the plaintiffs not taking delivery but leaving them at the defendants' premises. The defendants made requests to the plaintiffs to remove the sets but they did not do so. Then in 1952 the plaintiffs found an overseas buyer for thirteen of the sets at £150 each and they were disposed of to that buyer, leaving seven still on the defendants' premises. In 1956 the defendants, having forgotten that the seven sets were the property of the plaintiffs, although still on their premises, sold them, with others which were the defendants' property, for scrap at £16 each. Some six months later the plaintiffs were offered £195 apiece f.o.b. by an overseas customer for such sets.

The action was for conversion, and it was argued that £195 was the figure to be taken as the value of each of the sets and not the £16 actually obtained. Streatfeild, J., considered *The Arpad* and held that the measure of damages in an action of tort of this type was governed by the first rule in *Hadley* v. *Baxendale* and that therefore he should award such damages as could be fairly and reasonably considered as arising naturally from the tort. (The writer would criticise this statement but in this case it does not seem materially to have influenced the result.) He then went on to state that it was well established that the proper measure of damages must be the value of the articles at the date of conversion and not necessarily the price offered to the plaintiffs some six months after the conversion took place. At the same time that price offered at that later date might be evidence of the state of the market : the price of £16 was scrap value because the sets were of little or no use in this country, but they were valuable to some overseas buyers.

His lordship concluded that the fact that someone was prepared to pay £195 in October, 1956, indicated that the real value of the goods had not fallen since 1952 when the thirteen sets had been sold for £150 each. He considered that he was entitled to take the last-known transaction as strong evidence of the value of the sets to the plaintiffs and he assessed their value at £150 each but made a deduction on the gross figure to allow for transport costs.

This is a useful case laying down that the last-known transaction may be taken as evidence of value. Another question is whether the plaintiffs could have claimed the full value of £195 if they had sued in detinue instead of conversion only. Since the defendants were not in possession of the goods, the rule that the damages are the same in conversion as in detinue would not apply, so that it seems to follow that the higher value would have been applicable had the action been framed in detinue.

L. W. M.

REQUIREMENTS OF A DEED

THERE are many occasions on which it becomes vitally important to decide whether in law a document will be regarded as a deed and most frequently, perhaps, this problem arises in relation to the requirement of consideration in contract and the application of the appropriate period of limitation under the Limitation Act, 1939. The following may be useful as a guide to the factors which must be considered in determining whether a document is also a deed.

In *Goddard's Case* (1584), 2 Co. Rep. 4*b*, it was found that three things were " the essence and substance of a deed, that is to say, writing in paper or parchment, sealing and delivery, and if it has these three . . . the deed is sufficient . . . the order of making a deed is, first to write it, then to seal it, and after to deliver it." It should be remembered, however, that if a deed is delivered without first being sealed it may be sealed and redelivered, but it will date from the time of such redelivery and not from the date of the original delivery (*Tupper* v. *Foulkes* (1861), 9 C.B. (N.S.) 797).

Writing and material

The requirement as to writing, at first thought to be confined to pen and ink, may now be extended to include printing and typewriting, and an instrument may be partly written and partly printed (*Foster* v. *Mentor Life Assurance Co.* (1854), 23 L.J.Q.B. 145), or lithographed (*R.* v. *Middlesex Registers* (1845), 7 Q.B. 156). Where a document is in writing in the literal sense it need not necessarily be written in ink and it may be in pencil (*Geary* v. *Physic* (1826), 4 L.J. (O.S.) K.B. 147). There would seem to be no reason to suggest that any other method of forming the letters will be less acceptable, although certainly unusual and possibly inconvenient, provided it admits " of a character being given to the handwriting " (*Geary* v. *Physic*, *supra*). The writing may be in any language.

It would appear that the stipulation as to the writing being on paper or parchment will be strictly adhered to and, in the words of Lord Coke, " it is to be understood, that it

ought to be in parchment or in paper. For if a writing be made upon a piece of wood, or upon a piece of linen, or on the bark of a tree, or on a stone, or the like, etc., and the same be sealed and delivered, yet it is no deed, for a deed must be written, either in parchment, or paper, as before is said, for the writing upon these is least subject to alteration and corruption" (Co. Litt. 35*b*, 229*a*). There would seem to be no reason for doubting that this ancient *dictum* is still the law, but the word "paper" must be widely construed to include the special papers which are used in modern processes such as photography.

Sealing

Except in the case of companies, building societies and industrial and provident societies which are also bound by articles of association or rules of the society as to the method of sealing documents (see, for example, *Re Balkis Consolidated Co., Ltd.* (1888), 58 L.T. 300), it is apparent that this requirement has been relaxed considerably.

At one time, no doubt, seals were very elaborate, but there was no need for a seal to bear the coat-of-arms, crest or initials of the person who affixed it and to-day a wafer bearing a simple design is in common use. A document has even been held to be a deed although no seal at all was employed. This was the case in *Sandilands* (1871), L.R. 6 C.P. 411, where a deed was sent to Australia for execution and acknowledgment and pieces of green ribbon were attached to the places where the seals should have been, but there was no wax or similar material. The attestation clause stated that the deed had been "signed, sealed and delivered" and two commissioners certified that the signatories had "acknowledged the same to be their respective acts and deeds." It was held that there was sufficient *prima facie* evidence that the deed had been sealed and Bovill, C.J., thought that "to constitute a sealing neither wax nor wafer nor a piece of paper nor even an impression is necessary." In *Re Smith* (1892), 67 L.T. 64, however, a document which was intended to be a bond bore the words "sealed with my seal" and claimed to have been "signed, sealed and delivered," but there was no mark, wafer or seal visible on the face of the document. It was held, in the circumstances of the case, that it could not be presumed that the bond had been sealed. This decision is not necessarily in conflict with that of *Re Sandilands*, *supra*, as in each case it is a question of fact as to whether a deed has been sealed by a particular person or is a deed at all (*National Provincial Bank of England* v. *Jackson* (1886), 33 Ch. D. 1).

Re Smith, *supra*, was considered in *Stromdale & Ball, Ltd.* v. *Burden* [1952] 1 Ch. 223, where Danckwerts, J., acknowledged that meticulous persons may still place their finger on a wax seal or wafer, but it appeared to his lordship "that, at the present day, if a party signs a document bearing wax or wafer or other indication of a seal, with the intention of executing the document as a deed, that is sufficient recognition of the seal to amount to due execution of the deed." His lordship believed that a signature, rather than a seal, was now the essence of due execution of a deed.

Delivery

Although delivery must be present before a document will take effect as a deed, physical delivery is unnecessary as "the efficacy of a deed depends on its being sealed and delivered by the maker of it, not on his ceasing to retain possession of it" (*per* Lord Cranworth in *Xenos* v. *Wickham* (1866), L.R. 2 H.L. 296). It must be proved that there were acts or words sufficient to show that the person concerned intended the document which he was executing to be his deed and to be binding upon him, but as Blackburn, J., suggested in *Xenos* v. *Wickham*, *supra*, if a person uses the words, "I deliver this as my deed," or words to that effect, there would be a sufficient delivery.

Actual delivery of a memorandum in writing is not in itself sufficient to make the memorandum a deed (*Goodright* v. *Gregory* (1773), 98 E.R. 682), but if physical delivery of a document which otherwise satisfies the requirements of a deed does take place it would be regarded without more as having been delivered for the purposes of the execution of the deed (*Thoroughgood's Case* (1612), 9 Co. Rep. 136*b*).

Signing

It was for many years a practice for the person executing a deed to acknowledge that the seal was his by signing his name near to the place where the seal was affixed, and in the case of deeds executed after 31st December, 1925, s. 73 (1) of the Law of Property Act, 1925, required that "where an individual executes a deed, he shall either sign or place his mark upon the same and sealing alone shall not be deemed sufficient."

Attestation is not required by law (with the exception of those instances where a statute has provided otherwise, as in the case of transfers of registered land under the Land Registration Act, 1925), but it has for many years been the invariable practice.

D. G. C.

"THE SOLICITORS' JOURNAL," 3rd APRIL, 1858

On the 3rd April, 1858, The Solicitors' Journal said: "The pain which we cannot but feel in recording fresh instances of fraud, folly and unscrupulousness in the conduct of commercial companies, is occasionally qualified by a strong sense of the ludicrous and absurd, excited by the narrative of their transactions. Without presuming to anticipate the decision of a case *adhuc sub judice*, we cannot help referring to the proceedings in the Court of Bankruptcy, in the matter of a company entitled the Electric Power, Light and Colour Company, Limited . . . With joint stock companies, as with fashionable novels, a good taking title is half the battle. A prospectus conclusively demonstrating profits from 10 to 100 per cent. and a list of directors, with names rich in prefixes and suffixes, often constitute, with the title, the basis of the undertaking. Nothing could be more dazzling to an imaginative and speculative mind, bent upon making a brilliant investment, than a project through which the subtle, all-pervading electric fluid, as the presiding agent, should develop itself, for the benefit of mankind and the enrichment of the shareholders, in the production of power, light and colour . . . The scheme, in its scientific portion, was based upon the ingenious discoveries, resulting in patented inventions, of J. J. Watson, Ph.D., C.E. and F.G.S., a young scientific gentleman, of whose abilities and skill we would not be understood to say a single disrespectful word . . . The patents were for the direct use of electric power for the use of electric light in illuminating public buildings, railway stations, etc., and for the production, by galvanic action, of pigments—Prussian blues, greens, yellows and whites of singular brilliancy. The power, also, appears to have been applied in the process of converting iron into steel . . . As to the juvenile inventor of these wonderful contrivances . . . it does not appear to what extent he is responsible in a commercial point of view. He may very well have believed in his own patent schemes. . . . but he is not by many the first projector of whose labours the result has been *fumus ex fulgore*."

Landlord and Tenant Notebook

REASONABLENESS AND HARDSHIP

THE " Notebook " refrained from discussing *Piper* v. *Harvey* [1958] 2 W.L.R. 408 ; *ante*, p. 174 (C.A.), which decided that the Rent Act, 1957, Sched. VI, para. 21, had not repealed the " greater hardship " proviso to the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*h*), partly because the decision confirmed the conclusion arrived at in Mr. Megarry's article " Floreat Greater Hardship," in our issue of 16th November, 1957 (101 SOL. J. 856), and partly because, whenever a tenant has been able to discharge the burden of proving greater hardship (the burden being on him : *Sims* v. *Wilson* [1946] 2 All E.R. 261 (C.A.)), it seems likely that, if the provision had never been there, the court would have refused to grant an order for possession because it did not consider it reasonable to make such an order (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)). Admittedly, *Syms* v. *Dean* [1929] E.G.D. 16 (of which more later), suggests the contrary ; but the latest decision on " reasonableness " supports the proposition advanced. In *Hardie* v. *Frediani* [1958] 1 W.L.R. 318 ; *ante*, p. 195 (C.A.), a county court judge (erroneously) ruled that the proviso had ceased to operate, but his refusal of an order on the " reasonableness " ground was upheld.

The landlord's case

The plaintiff in *Hardie* v. *Frediani* based his claim on the allegation that the dwelling-house claimed was reasonably required by him for occupation as a residence by a daughter of his over eighteen years of age (Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*h*)). At the time of the action the daughter in question, who was an expectant mother, occupied with her husband accommodation in the plaintiff's house, as did his son, and as did another married couple, the *S's*, who " occupied an appreciable portion " of the house. The plaintiff submitted that there would be uncomfortable overcrowding, and that it was not generally for the welfare and happiness of his daughter and her family and the other occupants that all should be in the same house.

The tenant's case

The defendant had living with him his wife, three children (ages ten, eleven and sixteen) and an orphan (aged twenty), and he urged that if Mr. and Mrs. *S* left the plaintiff's house the problem would be solved : the plaintiff's daughter had admitted that the accommodation thus vacated—a living-room, a bedroom and a butler's pantry which had been converted into a kitchen—would meet the requirements of herself and her family (the latter expression presumably including family *in futuro* as well as *in esse*). And the plaintiff owned other houses.

Movability

The learned county court judge is reported to have taken a most favourable view of the plaintiff and his daughter and, according to Lord Evershed, M.R., to have considered that the *S's* were decent people ; and to have concluded that, though he did not like the defendant's wife very much, it would not be reasonable to evict the defendant. He found that the plaintiff reasonably required the house claimed ; held, as mentioned, that the question of greater hardship did not arise, but considered that the effect of turning out the *S's* was relevant to the question of reasonableness.

Two points may be said to call for discussion : were the *S's* movable ; and, if only potentially so, was that a factor to be taken into consideration when considering whether or not it would be reasonable to grant an order against the defendant ?

On the first question, the finding amounted to this : The *S's* might or might not be protected by the Rent Acts. One must consider the chances of their making, and of their being able successfully to make, difficulties.

The Court of Appeal considered that the county court judge was entitled to take this line, which is, I submit, open to some criticism. There is not only the general rule that a court must have the best evidence—and neither party appears to have called either Mr. or Mrs. *S* to say what they would do if asked to go or what rights they claimed (quite decent people have been known to " retain possession by virtue of the provisions, etc." : Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1)). There is also the circumstance that, the restriction to the right to possession being by way of restriction on jurisdiction (the court is bound, before making an order for recovery of possession, to satisfy itself that such order may properly be made), the case was one in which the judge might, before deciding the issue and refusing the order, have called such witnesses himself. Hypothetical questions have, of course, to be dealt with by courts of law every day, e.g., when unliquidated damages are claimed ; but there does seem to have been rather more guesswork than is desirable in this case. Lord Evershed, M.R.'s question : " How much weight is one going to give to that fact [the fact that the *S's* accommodation would meet the plaintiff's daughter's needs], knowing that the *S's* may try to remain, may seek to raise the defences of the Acts, and so forth ? " was a rhetorical one, but one would have thought that even if the exact weight was unascertainable efforts could and should have been made to reduce the uncertainty.

But, while the sort of hypothetical question with which a court may deal does not include the question what it would decide if a claim were brought against someone else, it may be that the decision indicated to the *S's* that if it were necessary to invoke the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*h*), against *them*, the plaintiff would have a strong *prima facie* case, and would be in a better position than if he went seeking orders against tenants of other properties belonging to him.

Reasonableness

On the point whether, if the *S's* were movable, that was relevant as being " a circumstance affecting the interests . . . in the premises " (*Shrimpton* v. *Rabbits* (1924), 131 L.T. 478), there could be little doubt. The same case is, indeed, authority for the proposition that it is not enough for a landlord relying on the paragraph to establish that he reasonably requires possession : " because a wish is reasonable, it does not follow that it is reasonable in a court to gratify it." " There are two processes to be gone through," was the way in which Acton, J., put it. But when both were applied, the conclusion—consistent with Greene, M.R.'s description of the judge's duty to take into account *all* circumstances in a broad, common-sense way as a man of the world, in *Cumming* v.

Danson (1942), 112 L.J.K.B. 145 (C.A.)—was that if anyone was to be shifted to make room for the baby, it was the S's.

It may be possible that more was said than appears in the report about the plaintiff's point " that it was not generally for the welfare and happiness of his daughter, her husband and their baby that the present occupants, the daughter, her mother, the father and husband, should all be in the same house." It looks as if this point had been considered in connection with the first process, that of establishing the reasonableness of the wish, only. In my submission it could have been made a factor (" Some factors may have little or no weight, others may be decisive " : Greene, M.R., in *Cumming* v. *Danson, supra*), and an important one when considering whether it was reasonable to make the order sought, and those county court judges who have had experience of the divorce court, as commissioners, might attach more weight to the home-of-one's-own and absence of " in-laws " consideration than those who have not.

On the question whether balance of hardship can be a factor, we have *Syms* v. *Dean* [1929] E.G.D. 16. This was a decision on the since repealed provision in the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*g*) (ii), authorising the court to make an order for possession in favour of a landlord armed with an " agricultural certificate," and the county court judge appears to have applied the hardship test, then to be found in the Prevention of Eviction Act, 1924, s. 1, when refusing to make the order ; the account given to the Divisional Court was that the judge had found that the defendant's circumstances outweighed the plaintiff's and that it was therefore unreasonable to make the order sought. It was contended for the appellant landlord that the judge had misdirected himself in applying the 1924 Act—which, indeed, did not affect the ground for possession relied upon, and the Divisional Court accepted this contention. But it remitted the case, and there is no record of the final result ; and I suggest that the same conclusion could be reached when travelling on the right track.

Public interest

It might be that, the needs of agriculture and the need of the community for its products being what they were during the war, a case could have at one time (but not in 1929) have been made for turning out a family who would suffer greater hardship, etc., when the above sub-para. (ii) was in force. But, in general, while a wide view has been taken of the " circumstances," they have been limited to those " affecting either the landlord or the tenant in the premises " (*Williamson* v. *Pallant* [1924] 2 K.B. 173). The only suggestion that the interests of the public should be taken into account is, I think, to be found in the judgment of Denning, L.J. (as he then was), in *Cressacell* v. *Hodgson* [1951] 2 K.B. 92 (C.A.), the learned lord justice observing that it would be " undesirable " that a builder, privileged to build a new dwelling-house, should be allowed, for his own private profit, to turn a tenant out of his present house. There could be no parallel between such circumstances and the circumstances considered in *Hardie* v. *Frediani*.

R. B.

HERE AND THERE

LONG LIFE SPAN

FEW of us can really believe in our own deaths. " You'll not die ; it cannot be." Nor is the exercise of recalling the Four Last Things much encouraged by current social habits. Yet, strangely, while for practical purposes ignoring the inevitability of death, we continue to be astounded even by an exceptionally long life. It seems almost incredible that a man should have lived till 1958 who could actually remember the Franco-Prussian War when great European armies in many-coloured uniforms went to battle on horseback or in long marching columns. In a Paris flat he had watched the movements of little red and blue flags on a large map of France pinned to the billiard room wall, telling of the doom approaching the capital. When the time came to flee to England before the German armies closed in, he was fascinated by the Channel crossing in a paddle-steamer. Among the war news he heard how balloon transport had played a part in the defence of Paris. All this he could remember in later life, as well as his return after the war to a city devastated by three weeks' intensive bombardment and by the savage revolutionary civil strife among the French themselves that followed the capitulation. This man, a distinguished Englishman, who as a boy had lived those days, died on the 23rd March last. He had been Lord Chancellor at the start of another war when the Germans had once again closed in on Paris and occupied it and pressed on to blockade England with submarines and devastate London from the air. He lived to see Germany in turn devastated, the war end and the ruins of London made good. His name was Frederic Maugham. Throughout a long lifetime passed amid fantastic social and industrial changes and catastrophic upheavals among the nations he had lived placidly and studiously as a Chancery practitioner and an English judge, far from indifferent to events around him, but a keenly intelligent, judicially analytical observer rather than a participant.

SOLICITOR'S PROGENY

FOR solicitors in general and THE SOLICITORS' JOURNAL in particular the career and personality of Viscount Maugham has a keener interest than that of most other Chancellors. His grandfather was Robert Maugham who in 1825 was one of the principal founders of The Law Society and subsequently was its indefatigable and conscientious secretary for a quarter of a century. He also has a place in the genealogy of THE SOLICITORS' JOURNAL, for in 1830 he founded the *Legal Observer*, remaining its proprietor and editor until, on the foundation of this journal in 1857, the two were merged. His human progeny flowered in a Lord Chancellor. His journalistic progeny flourishes to this day. He is perpetuated also in his professional progeny. When he came to London from Cumberland and embraced the legal profession he entered the employment of Thomas Kennedy, a solicitor who lived and carried on business at No. 100 Chancery Lane. He was given his articles in 1817 and later taken into partnership. The successors of the firm now carry on business in the City of London as Tamplin & Co. Of Robert Maugham's eight children only the eldest, Robert Ormond, left issue. He, too, became a solicitor, set up practice in Paris and was legal adviser to the British Embassy there, making his home at No. 25 Avenue d'Antin (as it then was) near the Champs Elysées. During the German occupation of Paris his home remained unrequisitioned out of respect for the Union Jack

displayed on the balcony. Though his home had remained untouched, the war dealt a severe blow to his practice. Many of his old clients had vanished and never returned and he had virtually to build everything up afresh. Life was never quite the same again. Just as those who had known France before the great Revolution never forgot the lost *douceur de vivre* of the former times, so those who had known the gay genial Paris of Napoleon III found themselves afterwards living in an immeasurably harsher world of pessimism and social disunion.

LORD CHANCELLOR'S BEGINNINGS

THE future Lord Chancellor lost his beautiful and dearly loved mother in 1882 when he was sixteen. Two years later his father died. By means of scholarships he was able to go to Trinity Hall, Cambridge, where he did brilliantly as a mathematician and as an oarsman. But when he came to read for the Bar he found himself, despite the legal tradition in his family, without any influence to launch him. One of the Lincoln's Inn Benchers who signed his admission papers told him emphatically: "If I had a son I would sooner see him dead than going to the Bar"; and after his call in 1890, during the ten long years of waiting for success, when he made £70 in his first two years, £93 in his third year, £108 in his fourth year, £230 in his fifth year and so on, he had plenty of time to ask himself: "Why does any solicitor send a set of papers to a young man when there are many more competent older ones who would be glad to do the work?" At No. 3 New Square, where he shared the ground floor chambers with two other men, all too often a whole week would go by without a single set of papers arriving for him. "The waiting for work is a terrible drawback to a young barrister's life," he afterwards wrote, "and tends to sour his whole existence. I shall never forget those unhappy days." It implanted in his mind a lasting impression of the tremendous part that sheer luck plays in the career of a barrister—luck and, as he also emphasised, good judgment. But, then, the interplay of the two determines all life.

RICHARD ROE.

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Certificate of Disrepair Followed by Decontrol and Sale by Trustees

Q. *A* and *B* are trustees of the will of *X* and as such are the owners of a dwelling-house which has been let to a tenant for many years at the standard rent permitted under the Rent Acts. The net rateable value of the property is £12, and, because of the tenancy, it remained controlled under the Rent Act, 1957. The trustees served the appropriate notice of increase of rent on the tenant, in reply to which he served them with a notice of disrepair (Form G), in respect of which *A* and *B* took no action whatsoever. Eventually, the tenant obtained a certificate of disrepair, which was served on *A* and *B* by the local authority after following the requisite procedure. The tenant has vacated the property and the trustees propose to offer it for sale with vacant possession by public auction. None of the repairs mentioned in the certificate of disrepair have been done, nor do *A* and *B* intend to do them. (*a*) Does the certificate of disrepair automatically lapse on the tenant vacating the property, as the property would now appear to be decontrolled and certificates of disrepair can only be issued in respect of a controlled property? (*b*) If the certificate remains in force, must the trustees disclose it in the contract for sale, bearing in mind that as trustees they must obtain the best price possible for the property and not do anything which will cause any diminution to its value? (*c*) Is a certificate of disrepair a local land charge and therefore disclosed by a search in the Local Land Registry?

A. (*a*) In our opinion, yes. As the tenant has vacated the premises, even if relet, they must be decontrolled by s. 11 (2) of the Rent Act, 1957. Accordingly, the certificate of disrepair cannot have any effect on the rent of the premises. (*b*) As the certificate has no longer any application to the premises, we see no reason why its existence should be disclosed. The trustees will only be bound by the ordinary rules relating to disclosure of the state of repair of property sold. (*c*) No.

Decontrol of New Lettings—EFFECT ON "ALTERNATIVE ACCOMMODATION"

Q. We act on behalf of a protected tenant who has been served with a summons for possession on the ground that the landlord is offering suitable alternative accommodation. It is provided by s. 3 (3) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, that alternative accommodation shall be deemed to be suitable if it consists (*inter alia*): (*a*) "of a dwelling-house to which the principal Acts apply; or (*b*) of premises to be let as a separate dwelling on terms which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security afforded by the principal Acts in the case of a dwelling-house to which those Acts apply." However, under s. 11 (2) of the Rent Act, 1957, the Rent Acts shall not apply to new lettings, and in the result (subject to the exception within the proviso to s. 11 (2)) no alternative accommodation can comply with the requirements of s. 3 (3) of the 1933 Act. We conclude that the combined effect of these two sections must be to remove from the Rent Act grounds for possession that of alternative accommodation and we should be obliged for your comments on our view.

A. The conclusion is, in our opinion, rather too wide. It may not be impossible to let a decontrolled dwelling on terms which will satisfy para. (*b*) of the subsection cited. At county court level, a sub-lease of sixteen years less one week was accepted in *Fulford* v. *Turpin* (1955), 8 J.P.L. 365; and one county court judge's order containing the "security of tenure to be equivalent to, etc.," has, we believe, not been challenged. There is also the possibility of a 999-year lease determinable on all control ceasing (see our issue of 14th December, 1957: 101 SOL. J. 956).

Schedule IV—Necessity of Determining Tenant's Right to Retain Possession

Q. A client of ours is the landlord of a property which has become decontrolled by virtue of the fact that the rateable value exceeds £30 and is outside London—subject of course, to the standstill period. The landlord does not wish to obtain possession of the property nor enter into a three-year agreement and is quite prepared to allow the existing tenancy to continue after 6th October, 1958, provided the rent is increased to a more economic figure. The existing tenancy is still contractual as no notice to quit has ever been served. We consider that a notice to quit must in any event be served now: (*a*) to obtain an increase in the rent after 6th October next; (*b*) in order that in the future, should the landlord require possession, the tenancy can be terminated by one month's notice to quit. Are we correct in these assumptions?

A. We take it that the present tenancy is from month to month (or less) and agree that if a higher rent is to be made payable after 6th October, 1958, and the landlord is then to be entitled to possession by giving a month's notice, a Form S notice must be served (before 6th April). If no such notice were served and the matter left to agreement it would always be open to the tenant to set up that his " right to retain possession of the dwelling-house in the like circumstances, to the like extent and subject to the like provisions . . . as if the Rent Acts had not ceased to apply to the dwelling-house " had never been terminated: Sched. IV, para. 2 (1); and the sub-paragraph which follows would, in our opinion, be a formidable obstacle to an argument that the " to the like extent " permitted of a surrender by negotiation.

REVIEWS

An Introduction to Equity. Pitman's Equity Series. Fourth Edition. By G. W. Keeton, M.A., LL.D., of Gray's Inn, Barrister-at-Law, Professor of English Law in the University of London. 1956. London: Sir Isaac Pitman & Sons, Ltd. £2 15s. net.

The Law of Trusts. A Statement of the Rules of Law and Equity Applicable to Trusts of Real and Personal Property. Seventh Edition. By George W. Keeton, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1957. London: Sir Isaac Pitman & Sons, Ltd. £2 10s. net.

Professor Keeton's reputation as a teacher of law is as secure outside the university at which he holds his chair as it is within it, and it is to these two books that this well-deserved extra-mural renown is mainly due. Both are the subject of frequent new editions, so that in addition to their other advantages (and these are now so well known that it is unnecessary to say anything about them here) they afford the reader a really up-to-date view of the law.

The following remarks are intended as suggestions, which have occurred in the course of reading in both these books, for consideration when new editions are planned. In " An Introduction to Equity," in the section on the maxim that " Equality is Equity " at p. 145, the rule is stated that where two or more persons jointly advance money for the purchase of land and the money is advanced in unequal shares, there is a tenancy in common in equity. The inference here is that such tenancy in common is in proportionately unequal shares. It would be worth adding a note that in one class of case, which is unfortunately very common in the courts at present—disputes about the beneficial ownership of property between husband and wife, since *Jones* v. *Maynard* (1951) there is a very powerful tendency to prescribe an equal division on the principle that " equality is a kind of equity." The subject of mortgages is, from one point of view, dealt with very fully, but it is permissible to speculate whether the point of view is the right one: the practical importance of such matters as tacking and consolidation, which take up so much space in students' books, receded with the decrease in the popularity of real securities as trustee investments—a decrease due to the gradual extension over the years in the ranges of trustee investments. Some compression under these heads would leave room for a discussion of the remedies available to a mortgagee and the practice on applications for such remedies. *Re Gestetner's Settlement* (1953) is surely a leading case nowadays, and as such deserves mention in " An Introduction " as well as in the " Law of Trusts." And the section on the enforcement of restrictive covenants (pp. 319–321) does not bring out as well as it should the necessity of showing title to the benefit of the covenant which it is sought to enforce; nor does the statement that such a covenant must be imposed between vendor and purchaser take account of such covenants being imposed by mutual deed or as part of a leasehold building scheme.

In the " Law of Trusts," the section on protective trusts could well mention why such trusts, once so popular, have fallen into disfavour. *Chapman* v. *Chapman* (1954) is, somewhat oddly, discussed in the chapter on powers of investment. *Re Aldhous* (1955) could well be mentioned in connection with s. 27 of the Trustee Act, 1925. Finally, the print of this statute with which the book concludes—a useful feature—would be still more useful if the notes contained some reference to the history of the various sections. Without explanation, the student too often concludes that what was enacted in 1925 was then new law.

The Advocate's Devil. By C. P. Harvey, Q.C. 1958. London: Stevens & Sons, Ltd. 12s. 6d. net.

This little book practically reads itself, so brilliantly is it written and so lively the instances on which the author draws to illustrate his points. But it is clearly not meant to be finished with when the last page is reached; nor is it likely that any lawyer will be able to prevent some of Mr. Harvey's ideas from buzzing in his head more or less permanently. It may be that, like Lord Monckton in the foreword, a particular reader will take his stand, despite all that Mr. Harvey says, alongside the traditional apologists for the art and conscience of the advocate; but whether or not we agree with the author that you can only justify supporting a case which you know to be bad by the invocation of moral standards which are peculiar to the legal profession, we shall all find ample material in these pages for thought as well as for entertainment.

We would describe the work as a series of reflections on the general problems of those whose vocation it is to endeavour to convince judges and juries, with particular reference to the many temptations that beset the path. That the old Adam still sometimes arrays himself in stuff or even silk is certainly not concealed. But in his final chapter Mr. Harvey cites some examples from history (not always so ancient) by comparison with which the Inns of Court to-day seem populated by Angels.

Mr. Harvey writes kindly of solicitors. We venture, however, to assert that a worthy member of the lower branch is much more, in contentious business, than " an intermediary between the advocate and the lay client." The chapter headed " Solicitors " turns out to be devoted largely to a defence of the English system of a divided profession. One need be no fusionist to feel only half-convinced that the supposed dangers arising from an advocate having coached his witness have very much to do with this subject. To lay stress on the possibility of unreliable testimony from this cause may carry the implication that a large number of county court and magistrates' court cases are unsatisfactorily tried because the advocate has seen the witnesses, and that is hard to believe. In such a case, whatever may have taken place out of court, integrity is considered to be sufficiently guaranteed by the witness's oath, by the rule against leading questions-in-chief and by the facilities of cross-examination. No doubt the Bar's rule of detaching itself from witnesses has advantages for the client, in that a superior kind of generalship becomes possible for his counsel. But we would not go so far as Mr. Harvey in thinking that it is of any positive help in the elicitation of the truth.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

CRIMINAL LAW: FACTS ESPECIALLY WITHIN KNOWLEDGE OF ACCUSED: ONUS OF PROOF

Mary Ng *v.* R.

Lord Reid, Lord Tucker, the Rt. Hon. L. M. D. de Silva

19th March, 1958

Appeal from the High Court of Singapore.

The appellant, Mary Ng, was charged with and convicted of attempting to cheat one Hou Say Lian and thereby attempting to obtain $2,500 from him by representing to him that she was able to induce the magistrate before whom Hou Say Lian was to be charged with being in possession of prepared opium and smoking utensils to show favour to him. The trial judge in the First Criminal District Court of Singapore held that whether the appellant could or could not induce the magistrate to show favour to Hou Say Lian was a fact which was especially within the knowledge of the appellant, and that under s. 107 of the Evidence Ordinance of Singapore, which provided that "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him," the onus was on the appellant to prove that she could induce the magistrate to show favour to Hou Say Lian. The appellant, on conviction, was sentenced to three months' imprisonment and a fine of $5,000. The High Court of Singapore dismissed her appeal on 17th June, 1957, but reduced the fine to $3,000. She now appealed by special leave.

The Rt. Hon. L. M. D. DE SILVA, giving the judgment, said that the view of the trial judge on onus was erroneous. Section 106 of the Ceylon Evidence Ordinance was identical with s. 107 of the Singapore Ordinance, and in *Attygalle* v. *R.* [1936] A.C. 338, at p. 341, it was said: "It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed." It was clear, therefore, that by reason of s. 107 no burden was placed on the appellant in the present case to prove that there had been no deceit. The burden was upon the prosecution to prove affirmatively that there had been. It should have been made to appear sufficiently on established facts that the appellant had no reason to believe that she could have influenced the magistrate, and that had not been done. There was in fact no evidence against the appellant on a principal ingredient of the charge, namely, deceit, and the case, therefore, came within the range of cases in which the board would interfere. The appeal would be allowed and the conviction quashed.

APPEARANCES: *Bernard Gillis*, Q.C., and *J. Lloyd-Eley* (*Kingsley Wood & Co.*); *J. G. Le Quesne* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 599**

House of Lords

CARNAL KNOWLEDGE OF MENTAL DEFECTIVE: GIRL UNLAWFULLY DETAINED: WHETHER OFFENCE COMMITTED

Director of Public Prosecutions *v.* Head

Viscount Simonds, Lord Reid, Lord Tucker, Lord Somervell of Harrow and Lord Denning

6th March, 1958

Appeal from the Court of Criminal Appeal ([1958] 1 Q.B. 132; 101 SOL. J. 887).

By s. 56 (1) of the Mental Deficiency Act, 1913: "Any person (*a*) who unlawfully and carnally knows . . . any woman or girl under care or treatment in an institution or certified house or approved home, or whilst placed out on licence therefrom or under guardianship under this Act . . . shall be guilty of a misdemeanour . . ." The appellant was convicted on an indictment charging him with having carnal knowledge of a mental defective contrary to s. 56 (1) (*a*) of the Mental Deficiency Act, 1913. At the time the offence was alleged to have been committed the woman concerned was on licence from an institution for defectives to which she had been sent as a "moral defective" pursuant to an order made by the Secretary of State in July, 1947, in purported exercise of his powers under s. 9 of the Act. At the trial the prosecution produced the two medical certificates which were before the Secretary of State at the time that he made the order and upon which he had to be satisfied that the woman was a defective. Neither certificate contained any evidence on which it could be said that the woman was a moral defective within the meaning of s. 1 (1) (*d*) of the Act. On 21st October the Court of Criminal Appeal allowed the appeal and quashed the conviction. The Crown appealed to the House of Lords.

VISCOUNT SIMONDS, in a dissenting opinion, said that the documents under which the woman was detained appeared on the face of them to be defective. The Crown admitted that on the face of them they could be successfully challenged, e.g., on a writ of habeas corpus, but contended that this was irrelevant. It was argued that the legislation was for the protection of a woman "under care or treatment in an institution . . . or whilst placed out on licence therefrom" and that if a woman was in fact under such care or treatment or out on licence, it was not open to a defendant to question the legality of the detention; the legislation gave adequate protection to a man who, being charged with the offence, proved that he did not know and had no reason to suppose that she was a defective. The House was traditionally jealous to safeguard the liberty of the subject, but such a consideration was irrelevant in the present case. The man's liberty was not at stake, unless a man was to be at liberty to have carnal knowledge of any woman who was under treatment in an institution, on the chance that a defect might be found in the order of detention; nor was the woman's liberty at stake, for she was not a party, nor were the proper authorities parties, to the proceedings and her eventual liberty was to be determined by considerations beyond those of a defect in an order made many years before. His lordship regarded with anxiety the possibility that, as a result of this decision, whenever a man was charged with this offence, he could, though he knew that the woman was under treatment as a mental defective, demand to see "all the relevant documents" (whatever that might be), and, finding a chance flaw in them, successfully plead that she was not lawfully detained and that he therefore had committed no offence. It must be assumed that any defect which would support a writ of habeas corpus would be available to him and that the same result would follow, whether the woman was on the high road to recovery, as in the present case, or stood in particular need of protection. His lordship would decline to read s. 56 of the Act as imposing on the prosecution the burden of proving that the person under such care or treatment in an institution or placed out on licence therefrom was not only in fact under such care or treatment or so placed out on licence but was also lawfully detained.

LORD REID agreed with the opinion about to be delivered by Lord Tucker.

LORD TUCKER said that s. 56 nowhere created the simple offence of having carnal knowledge of a defective and in subs. (1) (*a*) the word "defective" did not appear. On proof that a girl was detained as an inmate in one of the specified institutions and under care and treatment therein as a defective or if she was shown, by the production of the licence, to be out on licence from one of those places to which the system of licences under the Act was applicable, that was *prima facie* proof that she was a defective lawfully under care or treatment as such and the Crown would be assuming an unnecessary burden if it admitted that in all cases under s. 56 it was incumbent on the prosecution to satisfy the jury by medical evidence that the girl came within one or other of the categories of mental defectives specified in s. 1 of the Act. That was to be presumed, but the foundation of the presumption, in the case of a person under detention or on licence, was the legality of the detention and the necessity for a licence to justify the patient's absence, and, if it were shown, as in the present case, that, on the face of the documents produced and received in evidence without objection, the detention was illegal, the presumption of defectiveness went and the prosecution must fail. It was proper that the prosecution should have in court, available for inspection by defending counsel, the relevant orders or other

documents on which the detention was based, so that, in a proper case and subject to questions of admissibility in evidence, the presumption of legality might be rebutted. The appeal should be dismissed.

LORD SOMERVELL and LORD DENNING were also of opinion that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., *Winn* and *Alan Booth* (*Director of Public Prosecutions*); *G. W. G. Jones* (*Ludlow, Head & Walter*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 617**

Court of Appeal

LANDLORD AND TENANT: CENTRAL REFRIGERATION INSTALLATION IN FLATS: SUPPLY OF MOTIVE POWER

Penn and Another *v.* Gatenex Co., Ltd.

Lord Evershed, M.R., Parker and Sellers, L.JJ.

28th February, 1958

Appeal from Willesden County Court.

The landlords of a block of flats known as Minehead Court, South Harrow, let one of the flats unfurnished to the plaintiffs under a tenancy agreement which contained no express reference to the provision of services by the landlords. The flat contained a refrigerator which was worked by a central installation under the landlords' control. The refrigerator was the only receptacle for food storage in the flat. By the tenancy agreement the use of the fixtures and fittings belonging to the landlords was granted to the tenant, but no specific reference was made to the refrigerator; the agreement also contained the usual covenant by the landlords for quiet enjoyment. When the tenants entered into occupation and for some time thereafter the refrigerator worked intermittently. Early in October, 1956, the defendants, Gatenex Co., Ltd., acquired the freehold and thereupon the refrigerator stopped working. In an action by the tenants of the flat for damages for failing to keep the refrigerator in proper working order, they claimed that by the express or implied terms of the tenancy agreement they were entitled to be supplied with refrigeration by the landlords and that the landlords were obliged to maintain and keep the central plant in proper working order. Alternatively they claimed that such terms were to be implied from the nature and circumstances of the agreement. The county court judge gave judgment in their favour and the landlords appealed.

LORD EVERSHED, M.R., said that counsel for the tenants had relied on the principle stated in *Birmingham, Dudley and District Banking Co.* v. *Ross* (1888), 38 Ch. D. 295, at p. 306, and *Aldin* v. *Latimer Clark, Muirhead & Co.* [1894] 2 Ch. 437, at p. 447, that the grantor of a house grants that which is necessary for the existence of the house and is under an obligation not to do anything which would interfere with what he has granted or the enjoyment of it or which would prevent it from being used for the purpose for which the grant was made. In this case, however, the defendants' sins, if sins they were, were of omission only. Omissions would not amount to breaches of the ordinary covenant for quiet enjoyment unless they amounted or were liable to amount in themselves to wrongful acts. No express obligation could be extracted from the agreement. The question was whether one could be inferred from the general words "fixtures and fittings." Undoubtedly the refrigerator came within that phrase, and so did other things such as baths. It had been contended that unlike a bath, which could be used without a central supply of hot water, this refrigerator was wholly useless as such without the motive force which was under the sole control of the landlords, but nevertheless an obligation to supply that force could not be drawn from the general terms aided by the covenant for quiet enjoyment. Similar contentions were considered by the Divisional Court in 1947 and 1948 in *R.* v. *Paddington and St. Marylebone Rent Tribunal; ex parte Bedrock Investments, Ltd.* [1947] K.B. 984 (affirmed on a different point by the Court of Appeal) and *R.* v. *Croydon and District Rent Tribunal; ex parte Langford Property Co., Ltd.* [1948] 1 K.B. 60. The county court judge had distinguished the *Croydon* case, where the tenant was not, as in the present case, granted the "use of the fixtures and fittings," but that distinction could not be supported.

PARKER, L.J., delivered a concurring judgment.

SELLERS, L.J., in a dissenting judgment, said that without the refrigerator the flat was incomplete for ordinary domestic living, having no other provision for storing food. The landlord had contracted to give the use of the refrigerator to the tenant and he was under the obligation so to maintain it as not to deprive the tenant of that use. The provision of hot water to radiators or pipes might be in a different category, because central heating was not as vital for the use of a flat as a refrigerator where no other reasonable provision for food storage was provided. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *H. Heathcote-Williams*, Q.C., *Bernard Finlay* (*Harewood & Co.*); *G. Lovegrove* (*Syed A. Rafique*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 606**

Chancery Division

INFANT: CUSTODY: STAY PENDING APPEAL

***In re* S, an Infant**

Roxburgh, J. 28th February, 1958

Motion.

An infant under the age of five years had always lived with his mother. The mother left the father at Easter, 1956, but the infant continued to live with her; the father saw the child at fortnightly intervals for about a year thereafter. On the application of the father to the justices on 24th February, 1958, an order was made giving custody to the father with limited access to the mother. The justices gave no reason for their decision, and counsel for the mother at once applied for a stay of the order pending an appeal. The justices refused the application and again gave no reasons. The father made an attempt to take the child from the mother, but she refused to part with him; a disturbance and a scuffle ensued with the result that the mother took the child away with her and retained custody of him.

ROXBURGH, J., said that there might be cases in which it was right to refuse any stay of an order transferring the custody of a child from one parent to the other, but where there was no urgency for the transfer it was not normally in the interests of an infant to refuse a reasonable stay pending appeal if the magistrates were satisfied that there was a genuine intention to appeal. Further, if they thought that they ought to refuse a stay, then, unless there was an even greater sense of urgency, they ought not to make the order to take effect *instanter* as distinct from, say, seven days thereafter, so as to enable the party aggrieved by their refusal to grant a stay to apply to the court to ask for a stay so that there should not be fights over the child and the handing back of the child to one or other of the contending parties. The *prima facie* rule was that, other things being equal, children of this tender age should be with their mother, and where a court gave the custody of a child of this tender age to the father it was incumbent on it to make sure that there really were sufficient reasons to exclude the *prima facie* rule. Here there was no urgency and the infant would remain in the custody of the mother until the hearing of the appeal. Order accordingly.

APPEARANCES: *T. A. C. Burgess* (*Waterhouse & Co.*, for *Burgess & Chesher*, Bedford); *W. A. B. Forbes* (*J. D. Langton & Passmore*, for *Mellows & Sons*, Bedford).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 391**

Queen's Bench Division

MENTAL DEFICIENCY: DETENTION ORDER: VALIDITY

***In re* Sage**

Lord Goddard, C.J., Hilbery and Salmon, JJ. 27th January, 1958

Application for writ of habeas corpus.

In October, 1952, the applicant, then aged nineteen, on pleading guilty to larceny, was placed on probation for one year. In January, 1953, he pleaded guilty to a breach of the terms of the probation and was remanded in custody for a medical report. On 2nd February, 1953, evidence was given before the justices by the prison doctor who had examined the applicant that he was of the opinion that the applicant was a feeble-minded person within the meaning of the Mental Deficiency Acts requiring care

and treatment. The justices made a detention order under s. 8 (1) of the Mental Deficiency Act, 1913, in respect of the applicant, "being satisfied on medical evidence that the [applicant] is a defective within the meaning of the Mental Deficiency Acts, 1913 to 1938, . . . being a feeble-minded person." The applicant sought a writ of habeas corpus, alleging that the detention order was made without jurisdiction and was a nullity on the grounds (1) that since there was no evidence that he had suffered from a condition of arrested or incomplete development of mind before the age of eighteen, or that it was desirable in his interests that an order should be made, there was no evidence before the justices that he was a feeble-minded person or a defective within the meaning of s. 1 (1) and (2) of the Act of 1913; and (2) that the provision of s. 6 (3) of that Act requiring that the consent of a parent or guardian be obtained before a detention order was made applied to an order made under s. 8 (1) (*b*), but that his parent or guardian had not given his consent.

LORD GODDARD, C.J., said that the court was asked to say that there was no evidence which would justify the justices in making the order, but the court took a contrary view. On the evidence of the doctor and on their own observations it was open to the justices to make that order. On an application for habeas corpus the court had to see whether the detention was lawful. The detention was lawful here because an order which Parliament had authorised to be made under s. 8 of the Mental Deficiency Act was made; if it could have been shown that the justices had made the order without evidence, the court could have gone behind the order and interfered, but it was clear that there was evidence on which the justices could make the order. As to the second point, if the justices were simply being asked to make an order that a person should be sent to an institution for mental defectives, then, under s. 6 (3) of the Act of 1913, the consent of the parent or guardian must be obtained. That did not apply when the justices had to decide what was the proper order to make in respect of a person who had committed a breach of the criminal law. The court was not bound to consult the parent. What s. 8 (1) (*b*) said was that in such a case the court itself might make any order which, if a petition had been presented, the judicial authority might have made. The applicant was lawfully detained under the Act and there was no ground for granting a writ of habeas corpus.

HILBERY and SALMON, JJ., agreed. Application dismissed.

APPEARANCES: *Peter Pain* (*Walter Stein & Grover*); *Rodger Winn* (*Solicitor, Ministry of Health*).

(Reported by J. D. PENNINGTON, Esq., Barrister-at-Law) **[1 W.L.R. 387**

CONFLICT OF LAWS: FOREIGN RETROSPECTIVE DECREE EXCEPTING OBLIGATION ON ENGLISH DEBT FROM UNIVERSAL SUCCESSION

Adams and Others *v.* National Bank of Greece and Athens S.A.; Prudential Assurance Co., Ltd., and Others *v.* Same

Diplock, J. 13th March, 1958

Actions.

In 1927 a Greek mortgage bank issued sterling mortgage bonds repayable as to principal in 1957 with interest thereon meanwhile. The bonds were unconditionally guaranteed as to principal and interest by another Greek bank, and the proper law of the bonds and of the ancillary contract of guarantee was English law. In 1953 by an act of the Government of Greece and by royal decree the guarantor bank and a third Greek bank (hitherto unconnected with the bonds) were amalgamated into a new banking company, the defendant company, and it was enacted that the new company was the "universal successor" to the rights and obligations of the amalgamated companies. In *National Bank of Greece and Athens S.A.* v. *Metliss* [1957] 3 W.L.R. 1056 (proceedings instituted in December, 1955, by a bondholder claiming arrears of interest against the defendants), it was held that the English courts would give effect to that decree as transferring to the defendants the liabilities of the guarantor bank. On 16th July, 1956, the Greek Government passed a legislative decree amending the law and decree of 1953, so that the defendant company, as from the time of its creation, became the universal successor to the rights and obligations of the companies amalgamated "except for the obligation to which such companies were liable whether as principal or guarantor . . . under bonds payable . . . in gold or foreign currency, issued by limited liability companies." Under Greek law that decree had a retrospective effect and absolved the defendants from the obligations of the original guarantor bank in respect of the bonds. On dates subsequent to 16th July, 1956, a number of bondholders presented for payment coupons covering certain arrears of interest due under the bonds. Payment was refused by the mortgage bank and by the defendants. The bondholders brought these two actions against the defendants as guarantors under the bonds; the defendants relied on the Greek decree of 1956 as a decree governing status which the English courts would recognise, and the bondholders contended that that decree was a confiscatory or discriminatory foreign law to which English law would refuse to give effect.

DIPLOCK, J., said that in the case of a contract contained in bearer bonds, and where individual holders might have acquired their rights at any time since the issue of the bonds, it was wrong to approach the legal problem except upon the basis that on 15th July, 1956, the holders of the bonds possessed legally enforceable rights against the defendants under a contract the proper law of which was English law. It was for the defendants to show that their liability had since been discharged. They relied upon the law of 1956. His lordship had to look at the substance, not merely the form of that law. If it was a law which merely discharged the defendants' liabilities, the English courts would not treat it as effective to do so so far as a contract, the proper law of which was English, was concerned. The discharge of contractual liabilities of banks in the position of the defendants was obviously one of the objects which that law was seeking to achieve, and it was not brought into the category of a law of succession because it purported to achieve that object by amending a pre-existing law of succession. A law which altered the rights and liabilities of persons who were already successors was not a law of succession at all, and did not become so merely because as a matter of history those rights and liabilities were originally the result of a law of succession. The majority of their lordships in the House of Lords in the *Metliss* case, *supra*, had based their decision on the ground that comity, which required us to recognise the existence of a fictitious person created by another sovereign State, required us to recognise the attributes with which it had been created, which were governed by the law of the country which created it, because it was a question of status. There was no authority which compelled his lordship to hold that when a sovereign State had created a fictitious person with attributes and capacity to confer rights in English law upon third parties not subject to the jurisdiction of that sovereign State, and such rights had vested in the third parties, an English court should give effect to legislation of that State which purported to annul those vested rights in English law, whether directly or in the guise of restricting the attributes or capacity of the fictitious person. Considering the retrospective character of the law his lordship said that if he were right in holding that a law altering rights and liabilities of persons who were another's successors was not a law of succession, it did not become one because it said untruthfully that they never were successors at all. The substance of the law was not changed because it purported to say untruthfully that the fictitious person never had the liability. His lordship's view was that the law of 16th July, 1956, was not a law of succession or a law relating to capacity or status but a law which discharged liabilities as such, and it was not therefore under English rules of private international law effective to discharge the liability of the defendants as guarantors which the House of Lords had held existed before the law was passed. The action succeeded. Judgment for the plaintiffs.

APPEARANCES: *John Foster*, Q.C., *Mark Littman* and *L. J. Blom-Cooper* (*Herbert Smith & Co.*); *T. G. Roche*, Q.C., *N. H. Lever* and *John Newey* (*Stibbard, Gibson & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 588**

His Honour Judge John Charlesworth, of Hexham, Northumberland, left £36,914 (£36,349 net).

Mr. A. D. Dallow, solicitor, of Penkridge, Staffs, left £47,127 net.

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 26th March:—

Consolidated Fund (No. 2)
Nationalised Industries Loans

HOUSE OF LORDS

Progress of Bills

Read First Time:—

Land Drainage (Scotland) Bill [H.C.]	[27th March.
Maintenance Orders Bill [H.C.]	[26th March.
National Health Service Contributions Bill [H.C.]	[25th March.
University of Leicester Bill [H.C.]	[25th March.

Read Second Time:—

Dramatic and Musical Performers' Protection Bill [H.L.]	[27th March.
Horse Breeding Bill [H.L.]	[27th March.
Mersey Docks and Harbour Board Bill [H.C.]	[26th March.
Port of London (Superannuation) Bill [H.C.]	[26th March.

In Committee:—

Milford Haven Conservancy Bill [H.C.]	[25th March.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time:—

Brazilian Traction Subsidiaries Bill [H.L.]	[25th March.
Cammell Laird and Company Bill [H.L.]	[25th March.
Public Records Bill [H.L.]	[26th March.
Tyne Improvement Bill [H.L.]	[25th March.

Read Third Time :—

Royal Society for the Prevention of Cruelty to Animals Bill [H.C.] [27th March.

In Committee:—

House of Commons (Redistribution of Seats) Bill [H.C.]	[27th March.
Life Peerages Bill [H.L.]	[25th March.

B. Questions

Cheques Act (Receipts)

Mr. Amory stated that he had been advised that the giving unstamped of a receipt for £2 or more marked "Paid by cheque" would contravene the provisions of s. 103 of the Stamp Act, 1891, under which a fine of £10 might be imposed for giving a receipt liable to duty and not duly stamped. Section 3 of the Cheques Act, 1957, did not affect that provision in any way. [25th March.

Magistrates (Powers of Disqualification)

Mr. Watkinson stated that the penalties for failing to report an accident to the police were adequate. That was why this offence had not been included in the list set out in the Road Traffic Act, 1956, of offences for which a court might order disqualification. He would, however, review the matter when the next suitable opportunity offered.

During 1955 and 1956 the numbers of convictions for this offence were 6,360 and 6,849 respectively. [26th March.

STATUTORY INSTRUMENTS

Bridlington Corporation Water Order, 1958. (S.I. 1958 No. 440.) 5d.

County of Buckingham (Electoral Divisions) Order, 1958. (S.I. 1958 No. 456.) 5d.

County of Chester (Electoral Divisions) Order, 1958. (S.I. 1958 No. 435.) 5d.

County of Hertford (Electoral Divisions) Order, 1958. (S.I. 1958 No. 457.) 5d.

County of the Isle of Ely (Electoral Divisions) Order, 1958. (S.I. 1958 No. 458.) 5d.

County of Oxford (Electoral Divisions) Order, 1958. (S.I. 1958 No. 436.) 5d.

County of Warwick (Electoral Divisions) Order, 1958. (S.I. 1958 No. 439.) 6d.

County of West Sussex (Electoral Divisions) Order, 1958. (S.I. 1958 No. 437.) 5d.

County of Worcester (Electoral Divisions) Order, 1958. (S.I. 1958 No. 438.) 5d.

Family Allowances and National Insurance (Australia) Order, 1958. (S.I. 1958 No. 422.) 10d.

Family Allowances, National Insurance and Industrial Injuries (Norway) Order, 1958. (S.I. 1958 No. 423.) 9d.

Federation of Malaya (Appeals to Privy Council) Order in Council, 1958. (S.I. 1958 No. 426.) 6d.

Glamorgan River Board (Abolition of the River Cadoxton Internal Drainage District and the Baglan and Aberavon Moors Internal Drainage District) Order, 1958. (S.I. 1958 No. 467.) 5d.

Grimsby (Extension) Order, 1958. (S.I. 1958 No. 463.) 8d.

Import Duties (Exemptions) (No. 3) Order, 1958. (S.I. 1958 No. 475.) 5d.

Juvenile Courts (London) Order, 1958. (S.I. 1958 No. 417.) 5d.

Kingston-upon-Thames and Richmond (Boundaries) Order, 1958. (S.I. 1958 No. 462.) 8d.

Leeds–York–Scarborough Trunk Road (Musley Bank Corner Diversion) Order, 1958. (S.I. 1958 No. 444.) 4d.

Metropolitan Police Courts (Domestic Proceedings) Order, 1958. (S.I. 1958 No. 421.) 4d.

National Gallery (Lending outside the United Kingdom) (No. 1) Order, 1958. (S.I. 1958 No. 451.) 4d.

National Gallery (Lending outside the United Kingdom) (No. 2) Order, 1958. (S.I. 1958 No. 452.) 4d.

National Gallery (Lending outside the United Kingdom) (No. 3) Order, 1958. (S.I. 1958 No. 453.) 4d.

North Devon Water Board Order, 1958. (S.I. 1958 No. 434.) 6d.

North Cumberland Water Board Order, 1958. (S.I. 1958 No. 442.) 5d.

Public Service Vehicles and Trolley Vehicles (Carrying Capacity) (Amendment) Regulations, 1958. (S.I. 1958 No. 472.) 5d.

Public Service Vehicles (Conditions of Fitness) Regulations, 1958. (S.I. 1958 No. 473.) 1s.

Reciprocal Enforcement of Judgments (India) Order, 1958. (S.I. 1958 No. 425.) 5d.

Royal Edinburgh Hospital for Mental and Nervous Disorders Endowments Amendment Scheme Confirmation Order, 1958. (S.I. 1958 No. 443 (S.20).) 5d.

Safeguarding of Industries (Exemption) (No. 2) Order, 1958. (S.I. 1958 No. 476.) 5d.

Stopping up of Highways (City and County of Bristol) (No. 5) Order, 1958. (S.I. 1958 No. 447.) 5d.

Stopping up of Highways (County of Buckingham) (No. 3) Order, 1958. (S.I. 1958 No. 445.) 5d.

Stopping up of Highways (County of Buckingham) (No. 5) Order, 1958. (S.I. 1958 No. 431.) 5d.

Stopping up of Highways (County of Derby) (No. 4) Order, 1958. (S.I. 1958 No. 432.) 5d.

Stopping up of Highways (County of Hertford) (No. 6) Order, 1958. (S.I. 1958 No. 446.) 5d.

Stopping up of Highways (County of Kent) (No. 5) Order, 1958. (S.I. 1958 No. 408.) 5d.

Stopping up of Highways (County of Lancaster) (No. 8) Order, 1958. (S.I. 1958 No. 409.) 5d.

Stopping up of Highways (County of Leicester) (No. 5) Order, 1958. (S.I. 1958 No. 410.) 5d.

Stopping up of Highways (County of Leicester) (No. 6) Order, 1958. (S.I. 1958 No. 411.) 5d.

Stopping up of Highways (London) (No. 10) Order, 1958. (S.I. 1958 No. 412.) 5d.

Stopping up of Highways (London) (No. 13) Order, 1958. (S.I. 1958 No. 448.) 5d.

Stopping up of Highways (County of Monmouth) (No. 1) Order, 1958. (S.I. 1958 No. 413.) 5d.

Stopping up of Highways (County of Northumberland) (No. 1) Order, 1958. (S.I. 1958 No. 433.) 5d.

Stopping up of Highways (County of Sussex, West) (No. 1) Order, 1958. (S.I. 1958 No. 414.) 5d.

Stopping up of Highways (County of Wilts) (No. 5) Order, 1958. (S.I. 1958 No. 449.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 4) Order, 1958. (S.I. 1958 No. 450.) 5d.

Taunton (Extension) Order, 1958. (S.I. 1958 No. 461.) 8d.

Wages Regulation (Hair, Bass and Fibre) Order, 1958. (S.I. 1958 No. 441.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Prices stated are inclusive of postage.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Whose Public Opinion ?

Sir,—In your JOURNAL dated the 15th March, 1958, your comments on the Wolfenden Report distinguish between informed and uninformed public opinion and urge the Government to be guided by the former. This is, in its way, an argument for autocracy, the belief that policy should be controlled by a knowledgeable élite who ensure that the people receive "not what they want but what is good for them."

Such comments seem to be growing more common and suggest a weakening of our faith in elected representation and a growing desire for control by experts. Dissatisfaction with the results of our parliamentary government is indeed often voiced. Only two days after the issue of your JOURNAL, *The Times* published a letter from Father Trevor Huddleston referring to "the youth of England getting desperate from want of any real leadership from those in the position to give it." The members of the Cohen Committee were expressly non-political, that is, not liable to face public election.

When one reads the verbatim reports of parliamentary debates, it is perhaps not surprising that people long for leaders and informed guidance. As the Government take an increasing control of the country's finances and business, it may be natural to feel that the criterion for political posts should be specialised training, not mere popularity.

Nevertheless, these tendencies are disturbing. Are we reaching the conclusion that our democracy has failed or is it just a phase through which we are passing ?

Leicester. C. D. GEACH.

NOTES AND NEWS

Honours and Appointments

Mr. W. T. CHARLES, District Judge, Hong Kong, has been appointed a Judge of the High Court in the Western Region, Nigeria.

Mr. W. A. B. Goss, barrister-at-law, has been appointed chairman of the Agricultural Land Tribunal for the Northern Area in succession to His Honour Judge Harper, who relinquished the chairmanship on his appointment to the County Court Bench.

The following promotions and appointments are announced in the Colonial Legal Service: Mrs. E. B. ALLEN, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Miss J. GROVES, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. J. S. KERR, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. R. L. LE GALLAIS, Resident Magistrate, Kenya, to be Senior Resident Magistrate, Northern Rhodesia; Mr. V. O. MALCOLM, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. B. L. MYRIE, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. F. M. G. PHIPPS, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. G. M. SCOTT, Senior Crown Counsel, Ghana, to be Solicitor-General, Ghana; Mr. A. H. SIMPSON, Legal Draftsman, Ghana, to be Solicitor-General, Ghana; Mr. A. H. SIMPSON, Solicitor-General, Ghana, to be Puisne Judge, Ghana; Mr. G. B. SLADE, Legal Draftsman, Uganda, to be Solicitor-General, Uganda; Mr. H. O. WYNTER, Deputy Clerk of the Courts, Jamaica, to be Legal Clerk, Supreme Court, Jamaica; Mr. O. G. S. ADYE-CURRAN to be Divisional Magistrate, Aden; and Mr. J. J. HUGHES to be Resident Magistrate, Northern Rhodesia.

Miscellaneous

DEVELOPMENT PLANS

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 20th March, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Metropolitan Borough of Lewisham (Land at Marvels Lane). A certified copy of the proposals as submitted has been deposited for public inspection at The County Hall, Westminster Bridge, S.E.1 (Room 314A). A certified copy of the proposals has also been deposited for public inspection at Lewisham Town Hall, Catford, S.E.6. The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, at Whitehall, London, S.W.1, before 6th May, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the London County Council (reference LP/O.1) and will be then entitled to receive notice of any amendment of the plan made as a result of the proposals.

COUNTY OF MIDDLESEX DEVELOPMENT PLAN

On 27th February, 1958, the Minister of Housing and Local Government amended the above development plan. Certified extracts of the plan as amended have been deposited for public inspection at the Municipal Offices, Finchley, N.3, and also in the County Planning Department, No. 10 Great George Street, Westminster, S.W.1. The extracts of the plan so deposited are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4.30 p.m. on Mondays to Fridays and 9.30 a.m. and 12 noon on Saturdays (except on 4th, 5th and 7th April and except in the case of the copy deposited in the County Planning Department, which will not be open for inspection on Saturdays). The amendment became operative as from 25th March, 1958, but if any person aggrieved by it desires to question the validity

thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may within six weeks from 25th March, 1958, make application to the High Court.

COUNTY BOROUGH OF BURNLEY DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 1st March, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the County Borough of Burnley. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Clerk's Office, Town Hall, Burnley. The copies or extracts of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 9 a.m. and 5.15 p.m. on Mondays to Fridays inclusive and between the hours of 9 a.m. and midday on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 22nd April, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk, Town Hall, Burnley, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

DEVELOPMENT PLAN FOR THE COUNTY BOROUGH OF DERBY

On 7th March, 1958, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Borough Surveyor's Office, Council House, Corporation Street, Derby, Room No. 202, 2nd Floor. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between 9 a.m. and 1 p.m. and between 2.15 p.m. and 5.30 p.m. on weekdays, and between 9 a.m. and 12 noon on Saturdays. The plan became operative as from 14th March, 1958, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 14th March, 1958, make application to the High Court.

HAMPSHIRE DEVELOPMENT PLAN

Proposals for alterations to the above development plan were on 11th March, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to that part of the City of Winchester which exists between the River Itchen and Upper Brook Street on the east and west, and between North Walls and the High Street on the north and south.

Certified copies of the proposals, as submitted, have been deposited for public inspection at the following places:—

The Office of the Town Clerk, Guildhall, Winchester.
The Office of the County Planning Officer, Litton Lodge, Clifton Road, Winchester.

The copies of the proposals so deposited, together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above, between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th April, 1958, and any such objection should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with Southampton (Hampshire) County Council, The Castle, Winchester, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

THE COUNTY OF LINCOLN, PARTS OF LINDSEY DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 12th March, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situated within the undermentioned districts. A certified copy of the proposals as submitted has been deposited for public inspection at the County Offices, Lincoln. Certified copies of the proposals or certified extracts thereof so far as they relate to the under-mentioned districts have also been deposited for public inspection at the places mentioned below.

District and Place

Skegness Urban—The Town Hall, Skegness, Lincs.
Spilsby Rural—Council Offices, Toynton Hall, Spilsby, Lincs.

The copies or extracts of the proposals so deposited, together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested, at the Town Hall, Skegness, and the Council Offices, Toynton Hall, between 10 a.m. and 12 noon on any weekday, and between 2 p.m. and 4.30 p.m. on any weekday except Saturdays, and at the County Offices, Lincoln, between 10 a.m. and 12 noon, and 2 p.m. and 4.30 p.m. on any weekday except Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 3rd May, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Lindsey County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

THE SOLICITORS ACT, 1957

On 17th March, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of ALBERT HOLYOAKE BRYANT, of No. 343 Devonshire Road, Blackpool, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 17th March, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of ALUN DEVONALD CLEDWYN, of No. 226 Strand, London, W.C.2, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay the applicant his costs of and incidental to the application and inquiry.

On 17th March, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that FRANK DOUGLAS, of No. 19 Brazennose Street, Manchester, be suspended from practice as a solicitor for a period of one year from 17th March, 1958, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 17th March, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that DAVID ALAN ROSCOE HUMPHREY, of No. 21 Eskdale Road, Bexley Heath, Kent, be suspended from practice as a solicitor for a period of one year from 28th April, 1958, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

Wills and Bequests

Mr. W. E. Crook, solicitor, of Rednal, Worcs, left £19,396 net.

Major Evan Hayward, retired solicitor, of Colchester, formerly of Wotton-under-Edge, Glos, left £14,545 (£14,356 net).

"THE SOLICITORS' JOURNAL"

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).